

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET
PROCUREMENT
P.O. BOX 30026, LANSING, MI 48909
OR
525 W. ALLEGAN, LANSING, MI 48933

**NOTICE OF
CONTRACT NO. 071B5500055**
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR:	PRIMARY CONTACT	EMAIL
Gary L. Ray Ray and Associates, Inc. 4403 1 st Avenue, SE Suite 407 Cedar Rapids, IA 52402	Gary L. Ray	Glr@rayassoc.com
	TELEPHONE	CONTRACTOR #, MAIL CODE
	319-393-3115	

STATE CONTACTS	AGENCY	NAME	PHONE	EMAIL
PROGRAM MANAGER	State Board of Education	Marilyn Schneider	517-373-3902	schneiderm@michigan.gov
BUYER:	DTMB Procurement	Heather Calahan	517-284-7006	calahanh@michigan.gov

CONTRACT SUMMARY:			
DESCRIPTION: Professional Recruitment Services for the Selection of a State Superintendent of Schools			
Professional Recruitment Services			
INITIAL TERM	EFFECTIVE DATE	INITIAL EXPIRATION DATE	AVAILABLE OPTIONS
3 years	12/19/2014	12/18/2017	N/A
PAYMENT TERMS	F.O.B	SHIPPED	SHIPPED FROM
See Attachment B Pricing Sheet	N/A	N/A	N/A
ALTERNATE PAYMENT OPTIONS:			AVAILABLE TO MiDEAL PARTICIPANTS
<input type="checkbox"/> P-card <input type="checkbox"/> Direct Voucher (DV) <input type="checkbox"/> Other			<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
MINIMUM DELIVERY REQUIREMENTS:			
N/A			
MISCELLANEOUS INFORMATION:			
N/A			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:		\$54,584.00	

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MINIMUM DELIVERY REQUIREMENTS:			
N/A			
MISCELLANEOUS INFORMATION:			
N/A			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION:		\$54,584.00	

THIS IS NOT AN ORDER: Orders for delivery will be issued directly by the Department of Education through the issuance of a Purchase Order Form.

Notice of Contract #: 071B5500055

Gary Ray, President
Ray and Associates, Inc.

Date

Jeff Brownlee, Chief Procurement Officer
State of Michigan
Department of Technology, Management
& Budget – Procurement

Date



STATE OF MICHIGAN

STANDARD CONTRACT TERMS

Professional Services for the Selection of a State Superintendent of Schools

This STANDARD CONTRACT ("**Contract**") is agreed to between the State of Michigan (the "**State**") and Ray and Associates, Inc. ("**Contractor**"), a Iowa Corporation. This Contract is effective on December 19, 2014 ("**Effective Date**"), and unless terminated, expires on December 18, 2017.

The parties agree as follows:

1. **Duties of Contractor.** Contractor must perform the services and provide the deliverables described in **The Statement of Work** (the "**Contract Activities**"). An obligation to provide delivery of any commodity is considered a service and is a Contract Activity.

Contractor must furnish all labor, equipment, materials, and supplies necessary for the performance of the Contract Activities, and meet operational standards.

Contractor must: (a) perform the Contract Activities in a timely, professional, safe, and workmanlike manner consistent with standards in the trade, profession, or industry; (b) meet or exceed the performance and operational standards, and specifications of the Contract; (c) provide all Contract Activities in good quality, with no material defects; (d) not interfere with the State's operations; (e) obtain and maintain all necessary licenses, permits or other authorizations necessary for the performance of the Contract; (f) cooperate with the State, including the State's quality assurance personnel, and any third party to achieve the objectives of the Contract; (g) return to the State any State-furnished equipment or other resources in the same condition as when provided when no longer required for the Contract; (h) not make any media releases without prior written authorization from the State; (i) assign to the State any claims resulting from state or federal antitrust violations to the extent that those violations concern materials or services supplied by third parties toward fulfillment of the Contract; (j) comply with all State physical and IT security policies and standards which will be made available upon request; and (k) provide the State priority in performance of the Contract except as mandated by federal disaster response requirements. Any breach under this paragraph is considered a material breach.

Contractor must also be clearly identifiable while on State property by wearing identification issued by the State, and clearly identify themselves whenever making contact with the State.

2. **Notices.** All notices and other communications required or permitted under this Contract must be in writing and will be considered given and received: (a) when verified by written receipt if sent by courier; (b) when actually received if sent by mail without verification of receipt; or (c) when verified by automated receipt or electronic logs if sent by facsimile or email.

If to State:	If to Contractor:
Heather Calahan State of Michigan Michigan Department of Technology, Management and Budget PO BOX 30026 525 West Allegan St. Lansing MI 48909 Calahanh@michigan.gov 517 284 7006	Gary L. Ray Ray and Associates, Inc. 4403 1 st Avenue, SE Suite 407 Cedar Rapids, IA 52402 rayassoc.com 319-393-3115



3. **Contract Administrator.** The Contract Administrator for each party is the only person authorized to modify any terms and conditions of this Contract (each a “**Contract Administrator**”):

If to State:	If to Contractor:
Heather Calahan State of Michigan Michigan Department of Technology, Management and Budget PO BOX 30026 525 West Allegan St. Lansing MI 48909 Calahanh@michigan.gov 517 284 7006	Gary L. Ray Ray and Associates, Inc. 4403 1 st Avenue, SE Suite 407 Cedar Rapids, IA 52402 rayassoc.com 319-393-3115

4. **Program Manager.** The Program Manager for each party will monitor and coordinate the day-to-day activities of the Contract (each a “**Program Manager**”):

If to State:	If to Contractor:
Marilyn Schneider Michigan Department of Education 608 W. Allegan (48933) PO Box 30008 Lansing MI 48909 schneiderm@michigan.gov 517-373-3902	Gary L. Ray Ray and Associates, Inc. 4403 1 st Avenue, SE Suite 407 Cedar Rapids, IA 52402 rayassoc.com 319-393-3115

5. **Performance Guarantee.** Contractor must at all times have financial resources sufficient, in the opinion of the State, to ensure performance of the Contract and must provide proof upon request. The State may require a performance bond if, in the opinion of the State, it will ensure performance of the Contract.
6. **Insurance Requirements.** Contractor must maintain the insurances identified below and is responsible for all deductibles. All required insurance must: (a) protect the State from claims that may arise out of, are alleged to arise out of, or result from Contractor's or a subcontractor's performance; (b) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State; and (c) be provided by an company with an A.M. Best rating of "A" or better and a financial size of VII or better.

Insurance Type	Additional Requirements
Commercial General Liability Insurance	
<u>Minimal Limits:</u> \$1,000,000 Each Occurrence Limit \$1,000,000 Personal & Advertising Injury Limit \$2,000,000 General Aggregate Limit \$2,000,000 Products/Completed Operations <u>Deductible Maximum:</u> \$50,000 Each Occurrence	Contractor must have their policy: (1) endorsed to add “the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents” as additional insureds using endorsement CG 20 10 11 85, or both CG 2010 07 04 and CG 2037 07 04; (2) include a waiver of subrogation; and (3) for a claims-made policy, provide 3 years of tail coverage.
Motor Vehicle Insurance	
<u>Minimal Limits:</u> \$1,000,000 Per Occurrence	
Workers' Compensation Insurance	
<u>Minimal Limits:</u> Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
<u>Minimal Limits:</u> \$100,000 Each Accident \$100,000 Each Employee by Disease \$500,000 Aggregate Disease.	



Professional Liability (Errors and Omissions) Insurance

Minimal Limits:
\$1,000,000 Each Occurrence
\$1,000,000 Annual Aggregate

Deductible Maximum:
\$50,000 Per Loss

If Contractor's policy contains limits higher than the minimum limits, the State is entitled to coverage to the extent of the higher limits. The minimum limits are not intended, and may not be construed to limit any liability or indemnity of Contractor to any indemnified party or other persons.

Contractor must: (a) provide insurance certificates to the Contract Administrator, containing the agreement or purchase order number, at Contract formation and within 20 calendar days of the expiration date of the applicable policies; (b) require that subcontractors maintain the required insurances contained in this Section; (c) notify the Contract Administrator within 5 business days if any insurance is cancelled; and (d) waive all rights against the State for damages covered by insurance. Failure to maintain the required insurance does not limit this waiver.

9. **Independent Contractor.** Contractor is an independent contractor and assumes all rights, obligations and liabilities set forth in this Contract. Contractor, its employees, and agents will not be considered employees of the State. No partnership or joint venture relationship is created by virtue of this Contract. Contractor, and not the State, is responsible for the payment of wages, benefits and taxes of Contractor's employees and any subcontractors. Prior performance does not modify Contractor's status as an independent contractor.
10. **Subcontracting.** Contractor may not delegate any of its obligations under the Contract without the prior written approval of the State. Contractor must notify the State at least 90 calendar days before the proposed delegation, and provide the State any information it requests to determine whether the delegation is in its best interest. If approved, Contractor must: (a) be the sole point of contact regarding all contractual matters, including payment and charges for all Contract Activities; (b) make all payments to the subcontractor; and (c) incorporate the terms and conditions contained in this Contract in any subcontract with a subcontractor. Contractor remains responsible for the completion of the Contract Activities, compliance with the terms of this Contract, and the acts and omissions of the subcontractor. The State, in its sole discretion, may require the replacement of any subcontractor.
11. **Staffing.** The State's Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor.
12. **Background Checks.** Upon request, Contractor must perform background checks on all employees and subcontractors and its employees prior to their assignment. The scope is at the discretion of the State and documentation must be provided as requested. Contractor is responsible for all costs associated with the requested background checks. The State, in its sole discretion, may also perform background checks.
13. **Assignment.** Contractor may not assign this Contract to any other party without the prior approval of the State. Upon notice to Contractor, the State, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Contract to any other party. If the State determines that a novation of the Contract to a third party is necessary, Contractor will agree to the novation, provide all necessary documentation and signatures, and continue to perform, with the third party, its obligations under the Contract.
14. **Change of Control.** Contractor will notify, at least 90 calendar days before the effective date, the State of a change in Contractor's organizational structure or ownership. For purposes of this Contract, a change in control means any of the following: (a) a sale of more than 50% of Contractor's stock; (b) a sale of substantially all of Contractor's assets; (c) a change in a majority of Contractor's board members; (d) consummation of a merger or consolidation of Contractor with any other entity; (e) a change in ownership through a transaction or series of transactions; (f) or the board (or the stockholders) approves a plan of complete liquidation. A change of control does not include any



consolidation or merger effected exclusively to change the domicile of Contractor, or any transaction or series of transactions principally for bona fide equity financing purposes.

In the event of a change of control, Contractor must require the successor to assume this Contract and all of its obligations under this Contract.

15. **Acceptance.** Contract Activities are subject to inspection and testing by the State within 30 calendar days of the State's receipt of them ("**State Review Period**"), unless otherwise provided. If the Contract Activities are not fully accepted by the State, the State will notify Contractor by the end of the State Review Period that either: (a) the Contract Activities are accepted, but noted deficiencies must be corrected; or (b) the Contract Activities are rejected. If the State finds material deficiencies, it may: (i) reject the Contract Activities without performing any further inspections; (ii) demand performance at no additional cost; or (iii) terminate this Contract in accordance with Section 18, Termination for Cause.

Within 10 business days from the date of Contractor's receipt of notification of acceptance with deficiencies or rejection of any Contract Activities, Contractor must cure, at no additional cost, the deficiency and deliver unequivocally acceptable Contract Activities to the State. If acceptance with deficiencies or rejection of the Contract Activities impacts the content or delivery of other non-completed Contract Activities, the parties' respective Program Managers must determine an agreed to number of days for re-submission that minimizes the overall impact to the Contract. However, nothing herein affects, alters, or relieves Contractor of its obligations to correct deficiencies in accordance with the time response standards set forth in this Contract.

If Contractor is unable or refuses to correct the deficiency within the time response standards set forth in this Contract, the State may cancel the order in whole or in part. The State, or a third party identified by the State, may perform the Contract Activities and recover the difference between the cost to cure and the Contract price plus an additional 10% administrative fee.

16. **Terms of Payment.** Invoices must conform to the requirements communicated from time-to-time by the State. All undisputed amounts are payable within 30 days of the State's receipt. Contractor may only charge for Contract Activities performed as specified in the Contract. Invoices must include an itemized statement of all charges. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Contract Activities purchased under the Contract are for the State's exclusive use. Prices are exclusive of all taxes, and Contractor is solely responsible for payment of any applicable taxes.

The State has the right to withhold payment of any disputed amounts until the parties agree as to the validity of the disputed amount. The State will notify Contractor of any dispute within a reasonable time. Payment by the State will not constitute a waiver of any rights as to Contractor's continuing obligations, including claims for deficiencies or substandard Contract Activities. Contractor's acceptance of final payment by the State constitutes a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still disputed.

The State will only disburse payments under this Contract through Electronic Funds Transfer (EFT). Contractor must register with the State at <http://www.michigan.gov/cpexpress> to receive electronic fund transfer payments. If Contractor does not register, the State is not liable for failure to provide payment. Without prejudice to any other right or remedy it may have, the State reserves the right to set off at any time any amount then due and owing to it by Contractor against any amount payable by the State to Contractor under this Contract.

17. **Stop Work Order.** The State may suspend any or all activities under the Contract at any time. The State will provide Contractor a written stop work order detailing the suspension. Contractor must comply with the stop work order upon receipt. Within 90 calendar days, or any longer period agreed to by Contractor, the State will either: (a) issue a notice authorizing Contractor to resume work, or (b) terminate the Contract or purchase order. The State will not pay for Contract Activities, Contractor's lost profits, or any additional compensation during a stop work period.
18. **Termination for Cause.** The State may terminate this Contract for cause, in whole or in part, if Contractor, as determined by the State: (a) endangers the value, integrity, or security of any location, data, or personnel; (b) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; (c) engages in any conduct that may expose the State to liability; (d) breaches any of its material duties or obligations; or (e) fails to cure a



breach within the time stated in a notice of breach. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.

If the State terminates this Contract under this Section, the State will issue a termination notice specifying whether Contractor must: (a) cease performance immediately, or (b) continue to perform for a specified period. If it is later determined that Contractor was not in breach of the Contract, the termination will be deemed to have been a Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in Section 19, Termination for Convenience.

The State will only pay for amounts due to Contractor for Contract Activities accepted by the State on or before the date of termination, subject to the State's right to set off any amounts owed by the Contractor for the State's reasonable costs in terminating this Contract. The Contractor must pay all reasonable costs incurred by the State in terminating this Contract for cause, including administrative costs, attorneys' fees, court costs, transition costs, and any costs the State incurs to procure the Contract Activities from other sources.

19. **Termination for Convenience.** The State may immediately terminate this Contract in whole or in part without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance of the Contract Activities immediately, or (b) continue to perform the Contract Activities in accordance with Section 20, Transition Responsibilities. If the State terminates this Contract for convenience, the State will pay all reasonable costs, as determined by the State, for State approved Transition Responsibilities.
20. **Transition Responsibilities.** Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the State (not to exceed 90 calendar days), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Contract Activities to the State or its designees. Such transition assistance may include, but is not limited to: (a) continuing to perform the Contract Activities at the established Contract rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Contract Activities, training, equipment, software, leases, reports and other documentation, to the State or the State's designee; (c) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all materials, data, property, and confidential information provided directly or indirectly to Contractor by any entity, agent, vendor, or employee of the State; (d) transferring title in and delivering to the State, at the State's discretion, all completed or partially completed deliverables prepared under this Contract as of the Contract termination date; and (e) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, "**Transition Responsibilities**"). This Contract will automatically be extended through the end of the transition period.
21. **General Indemnification.** Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to: (a) any breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Contract; (b) any infringement, misappropriation, or other violation of any intellectual property right or other right of any third party; (c) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable); and (d) any acts or omissions of Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable).

The State will notify Contractor in writing if indemnification is sought; however, failure to do so will not relieve Contractor, except to the extent that Contractor is materially prejudiced. Contractor must, to the satisfaction of the State, demonstrate its financial ability to carry out these obligations.

The State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense if the State deems necessary. Contractor will not, without the State's written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim,



action, or proceeding. To the extent that any State employee, official, or law may be involved or challenged, the State may, at its own expense, control the defense of that portion of the claim.

Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. An attorney designated to represent the State may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.

22. **Infringement Remedies.** If, in either party's opinion, any piece of equipment, software, commodity, or service supplied by Contractor or its subcontractors, or its operation, use or reproduction, is likely to become the subject of a copyright, patent, trademark, or trade secret infringement claim, Contractor must, at its expense: (a) procure for the State the right to continue using the equipment, software, commodity, or service, or if this option is not reasonably available to Contractor, (b) replace or modify the same so that it becomes non-infringing; or (c) accept its return by the State with appropriate credits to the State against Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.
23. **Limitation of Liability.** The State is not liable for consequential, incidental, indirect, or special damages, regardless of the nature of the action.
24. **Disclosure of Litigation, or Other Proceeding.** Contractor must notify the State within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "**Proceeding**") involving Contractor, a subcontractor, or an officer or director of Contractor or subcontractor, that arises during the term of the Contract, including: (a) a criminal Proceeding; (b) a parole or probation Proceeding; (c) a Proceeding under the Sarbanes-Oxley Act; (d) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or (2) a governmental or public entity's claim or written allegation of fraud; or (e) a Proceeding involving any license that Contractor is required to possess in order to perform under this Contract.
25. **State Data.** All data and information provided to Contractor by or on behalf of the State, and all data and information derived therefrom, is the exclusive property of the State ("**State Data**"); this definition is to be construed as broadly as possible. Upon request, Contractor must provide to the State, or a third party designated by the State, all State Data within 10 calendar days of the request and in the format requested by the State. Contractor will assume all costs incurred in compiling and supplying State Data. No State Data may be used for any marketing purposes.
26. **Non-Disclosure of Confidential Information.** The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties. The provisions of this Section survive the termination of this Contract.
 - a. **Meaning of Confidential Information.** For the purposes of this Contract, the term "**Confidential Information**" means all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. The term "Confidential Information" does not include any information or documentation that was: (a) subject to disclosure under the Michigan Freedom of Information Act (FOIA); (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party's proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this Contract, in all cases and for all matters, State Data is deemed to be Confidential Information.
 - b. **Obligation of Confidentiality.** The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party



who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to a subcontractor is permissible where: (a) use of a subcontractor is authorized under this Contract; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's responsibilities; and (c) Contractor obligates the subcontractor in a written contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor or any subcontractor may be required to execute a separate agreement to be bound by the provisions of this Section.

- c. Cooperation to Prevent Disclosure of Confidential Information. Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.
- d. Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination, without liability to the State, of this Contract or any Statement of Work corresponding to the breach or threatened breach.
- e. Surrender of Confidential Information upon Termination. Upon termination of this Contract or a Statement of Work, in whole or in part, each party must, within 5 calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control; provided, however, that Contractor must return State Data to the State following the timeframe and procedure described further in this Contract. Should Contractor or the State determine that the return of any non-State Data Confidential Information is not feasible, such party must destroy the non-State Data Confidential Information and must certify the same in writing within 5 calendar days from the date of termination to the other party.

27. **Records Maintenance, Inspection, Examination, and Audit.** The State or its designee may audit Contractor to verify compliance with this Contract. Contractor must retain, and provide to the State or its designee and the auditor general upon request, all financial and accounting records related to the Contract through the term of the Contract and for 7 years after the latter of termination, expiration, or final payment under this Contract or any extension ("**Audit Period**"). If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, Contractor must retain the records until all issues are resolved.

Within 10 calendar days of providing notice, the State and its authorized representatives or designees have the right to enter and inspect Contractor's premises or any other places where Contract Activities are being performed, and examine, copy, and audit all records related to this Contract. Contractor must cooperate and provide reasonable assistance. If any financial errors are revealed, the amount in error must be reflected as a credit or debit on subsequent invoices until the amount is paid or refunded. Any remaining balance at the end of the Contract must be paid or refunded within 45 calendar days.

This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.

28. **Warranties and Representations.** Contractor represents and warrants: (a) Contractor is the owner or licensee of any Contract Activities that it licenses, sells, or develops and Contractor has the rights necessary to convey title, ownership rights, or licensed use; (b) all Contract Activities are delivered free from any security interest, lien, or encumbrance and will continue in that respect; (c) the Contract Activities will not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party; (d) Contractor must assign or otherwise transfer to the State or its designee any manufacturer's warranty for the Contract Activities; (e) the Contract Activities are merchantable and fit



for the specific purposes identified in the Contract; (f) the Contract signatory has the authority to enter into this Contract; (g) all information furnished by Contractor in connection with the Contract fairly and accurately represents Contractor's business, properties, finances, and operations as of the dates covered by the information, and Contractor will inform the State of any material adverse changes; and (h) all information furnished and representations made in connection with the award of this Contract is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading. A breach of this Section is considered a material breach of this Contract, which entitles the State to terminate this Contract under Section 18, Termination for Cause.

29. **Conflicts and Ethics.** Contractor will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Contract; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the Contract; (c) attempting to influence or appearing to influence any State employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay any person, other than employees and consultants working for Contractor, any consideration contingent upon the award of the Contract. Contractor must immediately notify the State of any violation or potential violation of these standards. This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.
30. **Compliance with Laws.** Contractor must comply with all federal, state and local laws, rules and regulations.
31. **Nondiscrimination.** Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, Contractor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, marital status, or mental or physical disability. Breach of this covenant is a material breach of this Contract.
32. **Unfair Labor Practice.** Under MCL 423.324, the State may void any Contract with a Contractor or subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.
33. **Governing Law.** This Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Contract must be resolved in Michigan Court of Claims. Contractor consents to venue in Ingham County, and waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. Contractor must appoint agents in Michigan to receive service of process.
34. **Non-Exclusivity.** Nothing contained in this Contract is intended nor will be construed as creating any requirements contract with Contractor. This Contract does not restrict the State or its agencies from acquiring similar, equal, or like Contract Activities from other sources.
35. **Force Majeure.** Neither party will be in breach of this Contract because of any failure arising from any disaster or acts of god that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Contractor will not be relieved of a breach or delay caused by its subcontractors. If immediate performance is necessary to ensure public health and safety, the State may immediately contract with a third party.
36. **Dispute Resolution.** The parties will endeavor to resolve any Contract dispute in accordance with this provision. The dispute will be referred to the parties' respective Contract Administrators or Program Managers. Such referral must include a description of the issues and all supporting documentation. The parties must submit the dispute to a senior executive if unable to resolve the dispute within 15 business days. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.

Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties' senior executive and either concludes that resolution is unlikely, or fails to respond within 15 business days. The parties are not prohibited from instituting formal proceedings: (a) to avoid the expiration of statute of limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a party makes a determination that a temporary restraining order or other injunctive relief is the only adequate remedy. This Section does not limit the State's right to terminate the Contract.



37. **Media Releases.** News releases (including promotional literature and commercial advertisements) pertaining to the Contract or project to which it relates must not be made without prior written State approval, and then only in accordance with the explicit written instructions of the State.
38. **Website Incorporation.** The State is not bound by any content on Contractor's website unless expressly incorporated directly into this Contract.
39. **Order of Precedence.** In the event of a conflict between the terms and conditions of the Contract, , a purchase order, or an amendment, the order of precedence is: (a) the purchase order; (b) the amendment; (c) and (c) the Contract.
40. **Severability.** If any part of this Contract is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Contract and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Contract will continue in full force and effect.
41. **Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
42. **Survival.** The provisions of this Contract that impose continuing obligations, including warranties and representations, termination, transition, insurance coverage, indemnification, and confidentiality, will survive the expiration or termination of this Contract.
43. **Entire Contract and Modification.** This Contract is the entire agreement and replaces all previous agreements between the parties for the Contract Activities. This Contract may not be amended except by signed agreement between the parties (a "**Contract Change Notice**").



STATE OF MICHIGAN

Professional Recruitment Services Statement of Work

1. DESCRIPTION OF SERVICES TO BE PROVIDED:

The State Board of Education is responsible for, as provided by the Michigan Constitution, appointing the superintendent of public instruction, the principal executive officer of the state department of Education. This Contract is for the procurement of services that will be used to assist the State Board of Education (the "State") in the search, recruitment, and selection of a superintendent of public instruction.

2. WORK AND DELIVERABLES:

The Contractor must perform, including but not limited to, the following activities:

- a. Support the State Board of Education in executing a successful search for the state superintendent.
- b. Customize the search process to meet the needs and expectations of the Michigan State Board of Education.
- c. Develop an informational flyer and online application form. Before the flyer and online application form is released it must be approved by the Michigan State Board of Education or its designee.
- d. Develop all written correspondence regarding the vacancy including but not limited to, all required forms for the advertisement, application, and screening process.
- e. Develop and manage a full solicitation package and distribution plan for national distribution based on the State Board of Education approved job description and criteria as identified in **Attachment A**.
- f. Develop, manage, and conduct all aspects of the recruitment process on a statewide, regional and national basis, including, but limited to the following, as follows:
 - Notify all associates and networks to actively recruit potential candidates
 - Contact individuals in the Contractor's database whose interests match the State's criteria.
 - Actively recruit applications from high qualified individuals.
 - Solicit nominations from knowledgeable people in the profession
 - Contact other professional consultants in private and public sectors
 - Discuss with all candidates the State Board of Education's profile and criteria for the position
 - Advertise nationally including, but not limited to, advertising in the following publications:
 - AASA Job Bulletin & Website
 - AASA Job Bulletin & Website
 - Education Week Newspaper and Website
 - Executives Only Website
 - National Association of State Boards of Education
 - Council of Chief State School Officers
 - National Association of School Superintendents (NASS) Website



Michigan Association of School Administrators
 Local Newspapers
 LinkedIn Website
 Ray and Associates, Inc.
 The Ladders Passport
 School Leadership 2.0
 Education America Network Website
 Michigan Association of School Boards
 Association of Latino Administrators and Superintendents (ALAS)
 American Association of School Personnel Administrators (AASPA)
 The Broad Center (Broad Talent Bridge)
 Career Builder
 National Alliance of Black School Educators (NABSE)

- g. Manage inquiries and communication regarding the solicitation
- h. Facilitate State Board of Education in assessing candidates against the approved job description and criteria identified in **Attachment A**, and make recommendations for narrowing pool of applicants
- i. Conduct due diligence reference and non-reference information gathering on applicants of interest, including, but not limited to, conducting reference checks and additional background investigation for each candidate that meets board criteria; verifying qualifications, experience and eligibility certification; contacting state associations and national leadership organizations; conducting online research such as Google, Yahoo, Bing, Facebook, Twitter, and other social media sources as well as checking for blogs through candidate's local newspaper.
- j. Assist State Board of Education in the process of identifying finalists, additional due diligence, information gathering, and the interview and final decision-making process.
- k. Provide an impartial and objective consensus building matrix instrument to assist the board in determining the finalists for an interview.
- l. Assist the board in establishing the interview format and interview questions.
- m. Coordinate any stakeholder involvement in the interview process.
- n. Coordinate, including paying up front costs for all travel arrangements, including flight, lodging, and meal reimbursements, with selected candidates.
- o. Assist the State in negotiating the contract with the successful candidate.
- p. Send Contractor developed, but State approved communications to the candidates not selected or interviewed.
- q. Assist in preparing a press release announcing the appointment of the state superintendent.

The Contractor must provide Contract Activities during the State's normal working hours Monday – Friday 7:00 a.m. to 6:00 p.m. EST, and possible night and weekend hours depending on the requirements of the project.

Major Milestone	Major Deliverables	Date Due
Solicitation Preparation	State approved candidate application developed	12/19/2014
	State approved advertisement flyer developed	12/19/2014



Recruiting and Screening	Post application information on Ray and Associates website	12/19/2014 to final candidate acceptance of the position
	E-mail promotional flyer and online applications instructions to interested candidates	12/19/2014 to final candidate acceptance of the position
	Advertise nationally with State approved advertising firms	12/19/2014 to final candidate acceptance of the position
	Continuous outreach nationally as identified in the Statement of work	12/19/2014 to final candidate acceptance of the position
	Deadline for application material (all applications will be reviewed. Materials received after the closing date may be given full consideration depending upon the number of applications received and other factors).	02/19/2014
Candidate Selection	Develop and provide recommended interview questions and procedures	03/03/2015
	Develop an impartial and objective consensus building matrix instrument	
	Conduct due diligence process identified in Section 2 i above	
	Facilitate the assessment of candidates and make candidate recommendations to the State	3/3/2015
Semi-Finalist Candidate Presentation	Coordinate travel for semi-finalists	
	Semi-finalists candidate interviews held with the State Board of Education on site in Lansing.	3/10/2015 – 3/11/2015
	Meet with the State to discuss final candidate selection and next steps	3/10/2015 – 3/11/2015
Finalist Candidate Presentation	Consult with and discuss final candidate contract terms with State identified finalist(s)	3/11/2015 – 3/17/2015
	Coordinate travel for finalists	
	Finalist candidate interviews held with the State	3/18/2015
	Meeting with State to discuss leading candidate and next step	3/18/2015
	Option on-site visit of leading candidate(s) current district by board members	
	Candidate selected and offered the position and a contract	3/31/2015
	State approved correspondence sent to candidates not selected for the position.	
	Prepared press release announcement approved by the State	
	Contract close out meeting with the State.	



3. KEY PERSONNEL

- a. Gary L. Ray, President
Principal/Project Coordinator-Cedar Rapids, IA

Will supervise and oversee the search conducted by the firm, and will directly interact with the Michigan State Board of Education and any committee that may be established on all details of this search.

- b. Dr. Timothy Quinn
President, Quinn and Associates- Old Mission, MI

Will provide lead role in candidate recruiting and screening.



STATE OF MICHIGAN

Professional Recruitment Services

Attachment A

Michigan State Board of Education

State Superintendent of Michigan

Job Description

Roles and Responsibilities

- "The State Board of Education shall appoint a superintendent of public instruction whose term of office shall be determined by the board. He shall be the chairman of the board without the right to vote, and shall be responsible for implementing its policies. He shall be the principal executive officer of a state department of Education which shall have powers and duties provided by law" (Michigan Constitution).
- The Superintendent reports to the State Board of Education, assists the Board in developing policy, and in fulfilling its constitutional obligations, and is responsible for the implementation of policies established by the Board.
- The Superintendent is responsible for the day-to-day management, supervision, and leadership of the Michigan Department of Education.
- The Superintendent assists the State Board of Education in developing an ongoing strategic plan for educational improvement in Michigan, and leads its implementation.
- The Superintendent is responsible for the facilitation of alliances, programs and partnerships, where appropriate, to further SBE policy and the strategic plan, and to support the continual improvement of public education in the state.
- The Superintendent is responsible for developing cooperative working relationships with other government departments, the executive office, the legislature, and constituent groups, in service of SBE policy and the strategic plan for improving education.
- The Superintendent is a spokesperson for the Michigan Department of Education and an advocate for the needs of education in the state.

Desirable Credentials, Skills, Traits, and Experience

1. High level of experience and effectiveness in managing significant education improvement and reform in K-12 systems; with particular emphasis on (in order of priority):
 - Experience as a school administrator and/or superintendent, education leader or manager at a level of significant scope and responsibility
 - Classroom/teaching/direct education experience
 - Working knowledge of state and federal policy
 - Experience with turnaround and increasing student achievement
 - Knowledge of special education and a commitment to educating all children
 - Extraordinary command of the application of contemporary technologies to education
 - History of work with mixture of urban and rural populations
2. Personal traits; with emphasis on (in priority order):
 - Integrity
 - Consensus and team builder
 - Collaborative approach
 - Critical thinker/thought leader
 - Visionary leadership
 - Appreciates teachers and educators
 - Strong communication skills
 - Sensitive to diverse and ethnic populations
 - Not opposed to labor
3. Has a vision and strategy for education improvement that can effectively improve learning and outcomes for all children, with emphasis on (in priority order):



- Views education holistically as preparation for life, work, citizenship and a lifetime of learning, critical thinking, and discovery
 - Believes all children can learn
 - Supports well-rounded education: arts, music, social and emotional supports, physical education
 - Committed to close achievement gaps and advance strategies that narrow historic inequities in learning and outcomes
 - Recognition of the effects of poverty
 - Vision combines reforms in education delivery to better help all students achieve and get good outcomes, with support for strategies and capacity-building that delivers on this goal
4. Demonstrated ability to lead policy change and educational improvement in a politically charged, multi-stakeholder environment with emphasis on (in priority order):
- Ability to work effectively with the governor, state legislature, grassroots community, and lobbyists
 - Ability to lead and engage multiple stakeholders/build coalitions
 - Politically astute
5. Effective manager with emphasis on (in priority order):
- Strong education organization management skills and integrity
 - Experience managing a complex educational organization or large team to a high performance level
 - Commitment to research, evidence-based decisions
6. Interest and commitment to working closely and in alignment with elected state board of education with emphasis on (in priority order):
- Willingness to work in a transparent, open way with the board
 - Commitment to support SBE's policy leadership in education and work with SBE to develop and advance policy, and lead its implementation
 - Willingness and ability to report to and support politically elected board
7. Committed to upholding and enhancing the vital role of public education in Michigan with:
- A passion for public education
8. Understanding of Michigan's unique challenges with emphasis on (in priority order):
- Michigan knowledge and relationships
 - Has a vision for addressing MI specific problems
9. Articulate spokesperson and ability to engage the public and constituencies



STATE OF MICHIGAN

Professional Recruitment Services

Attachment B

Michigan State Board of Education State Superintendent of Michigan *Pricing*

BASE FEE

The base fee includes all services and deliverables identified in the contract - **\$30,000**.

Pricing for additional services outside the professional recruitment services identified in this contract are as follows:

Consultant \$100.00 an hour

Administrative Asst. \$25.00 an hour

The Contractor may invoice for the base fee in three installments:

\$10,000 at contract inception

\$10,000 after the State meets with the semi-finalist and the Contractor to discuss final candidate selection and next steps

\$10,000 the last day of the month in which the state superintendent is officially hired by the State

ADVERTISING

The Contractor must utilize, at a minimum, the advertising methods identified in 2f of the Statement of Work and may invoice \$5734.00 at time of contract inception for these services.

OTHER EXPENSES

The State will reimburse the Contractor for all other expenses incurred and verified (supporting documentation) as follows:

Copies – \$0.17 per page for all materials copied for the search and pre-screening materials

Postage and Shipping – actual costs

Telephone – actual costs not to exceed \$900.00

The Contractor may invoice once a month.

The Contractor must work with the Program Manager to identify the communication methods for delivery of correspondence during the Contract. The electronic delivery of all material should be made when possible.

TRAVEL

All travel (airfare, hotel, meals, car rental, and mileage expenses) must be preapproved with the Program Manager. All decisions relating to the extent and mode of travel and other reimbursable expenses must be made with concern for efficiency and economy. The State will pay for Contractor travel expenses (airfare, hotel, meals, car rental, and mileage expense) if such travel is necessary, and when working on the Contract. The State will pay the Contractor for Contractor coordinated travel expenses for any State selected candidate selected for an interview. For Contractor and candidate travel expenses, if travel is devoted to working for one or more clients in addition to the State, the State must only be billed for the proportion of time benefiting the State.



The State will reimburse the Contractor for all verified (supporting documentation) travel expenses in accordance with the reimbursement rates identified in the State of Michigan Travel Regulations. The travel regulations are located at:

http://www.michigan.gov/documents/DMB_StandardizedTravelRegulations_23541_7.pdf

Send all invoices to:

Michigan Department of Education
OFM-Accounts Payable
Attention: Amy Schmitt
PO Box 30008
Lansing, MI 48909
Or
schmitta@michigan.gov
bassettc@michigan.gov